

[Counsel Listed on Signature Pages]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re JDSU UNIPHASE CORPORATION
SECURITIES LITIGATION

Master File No. C-02-1486 CW (EDL)

This Document Relates To:

ALL ACTIONS

**STIPULATION AND ORDER
REGARDING UNCONTESTED
MOTIONS *IN LIMINE* AS MODIFIED**

1 WHEREAS, the parties exchanged proposed Motions *in Limine* on August 24, 2007, and
2 continued to discuss these matters thereafter;

3 WHEREAS, on September 5, 2007, the parties met and conferred and reached agreement
4 on certain proposed Motions *in Limine*;

5 IT IS HEREBY STIPULATED by and between the parties, through their counsel of
6 record, that:

7 1. The parties shall not attempt to introduce evidence or argument demonstrating or
8 referring to the current financial condition of JDS Uniphase Corporation (“JDSU”), including
9 the potential effect of any judgment in this matter on JDSU’s business, shareholders, or
10 employees, or the possibility that JDSU would have to file for bankruptcy protection as a
11 consequence of an adverse judgment. This stipulation does not prohibit the parties from
12 introducing evidence, such as testimony adduced through current JDSU employees,
13 concerning JDSU’s current operations, including the fact that JDSU is still in business, the
14 locations of the Company’s operating facilities, and descriptions of JDSU’s products,
15 provided that such evidence is admissible.

16 2. During the initial phase of the trial of this matter, as described in Paragraph 13
17 below, the parties shall not attempt to introduce evidence or argument demonstrating or
18 referring to prior litigation by or against JDSU, the Individual Defendants (Kevin Kalkhoven,
19 Jozef Straus, Anthony Muller and Charles Abbe), or the named plaintiffs (“Plaintiffs”).¹

20 3. During the initial phase of trial in this matter, as described in Paragraph 13
21 below, the parties agree that Lead Plaintiff may identify itself as “Connecticut Retirement
22 Plans and Trust Funds, a pension fund for public employees in the State of Connecticut,” but
23 shall not provide additional detail about, or identify or describe the individual beneficiaries
24 of, the constituent funds.

27 ¹ The parties have not reached agreement whether evidence of Plaintiffs’ prior litigation
28 would be relevant if, after a finding of liability, a second phase of the trial commences.

1 4. The parties shall not attempt to introduce evidence or argument regarding
2 individualized issues of reliance or damages during the initial phase of trial, as described in
3 Paragraph 13 below.

4 5. The parties shall not attempt to introduce evidence or argument stating or
5 implying that this matter is brought or being prosecuted as a governmental enforcement or
6 regulatory action.

7 6. The parties shall not attempt to introduce evidence or argument referring to the
8 price of the common stock of JDS Fitel, Inc. (“Fitel”), Uniphase Corp. (“Uniphase”), or
9 JDSU during any given period, or to the number of shares of JDSU common stock involved
10 in any particular transaction(s), without adjusting for splits in Fitel, Uniphase, and JDSU
11 common stock. The parties intend to attach a stock price table to the Joint Pretrial
12 Conference Statement that accurately reflects the split-adjusted price of JDSU stock, and the
13 fact that JDSU common stock split 2-for-1 (*i.e.*, replacing each share or option to purchase
14 common stock with two shares or option to purchase two shares) on the following days:
15 July 27, 1999, December 30, 1999 and March 10, 2000.

16 7. The parties shall not attempt to introduce evidence or argument concerning
17 JDSU’s accounting for the compensation paid to former SDL executives.²

18 8. The parties shall attempt to reach an agreement regarding the appropriate context
19 for each challenged statement upon which Plaintiffs purport to base liability. They will
20 attach a table to the Joint Pretrial Conference Statement that reflects any agreements they
21 have reached regarding the proper context for each challenged statement. Plaintiffs also shall
22 identify, in that table, the precise language of each statement that they contend is false or
23 misleading.

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26 ² The parties did not reach agreement regarding the exclusion of any reference to the
27 compensation paid to former SDL executives. Accordingly, that issue is addressed separately in
28 Defendants’ Motions *in Limine*.

1 15. Percipient witnesses shall, at the request of any party, be excluded from the
2 courtroom while other witnesses are testifying. The parties agree that this does not apply to
3 parties and expert witnesses.

4 16. The issue of whether witnesses who appear on Defendants' witness list may be
5 asked leading questions by Plaintiffs shall be resolved at trial.

6 17. The parties reserve the right to request the Court to resolve, at the appropriate
7 time, additional motions *in limine* directed to the second phase of trial.

8
9 Dated: September 18, 2007

MORRISON & FOERSTER LLP

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11 By: /s/ Jordan Eth

12 Jordan Eth

13 Attorneys for Defendants
14 JDS Uniphase Corporation, Jozef
15 Straus, Anthony R. Muller, and
16 Charles J. Abbe
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1 Dated: September 18, 2007

HELLER EHRMAN LLP

2
3 By: /s/ Howard S. Caro
Howard S. Caro

4 Attorneys for Defendant
5 Kevin Kalkhoven

6
7 Dated: September 18, 2007

LABATON SUCHAROW & RUDOFF LLP

8 BERMAN DEVALERIO PEASE TABACCO
9 BURT & PUCILLO


10
11 By: /s/ Anthony J. Harwood
Anthony J. Harwood

12 Liaison Counsel for Lead Plaintiff
13 Connecticut Retirement Plans and Trust
14 Funds

15 PURSUANT TO STIPULATION, IT IS SO ORDERED, **EXCEPT THE**
16 **BIFURCATION PROVISIONS, WHICH MAY BE ADDRESSED AT THE PRETRIAL**
17 **CONFERENCE.**

18
19 9/20/07

20 Dated: _____


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22 HONORABLE CLAUDIA WILKEN
23 United States District Court Judge
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GENERAL ORDER 45 ATTESTATION

I, Jordan Eth, am the ECF User whose ID and password are being used to file this Stipulation and [Proposed] Order Regarding Uncontested Motions *in limine*. In compliance with General Order 45, X.B., I hereby attest that Anthony J. Harwood, attorney for Plaintiffs, and Howard S. Caro, attorney for Defendant Kevin Kalkhoven have concurred in this filing.

Dated: September 18, 2007

MORRISON & FOERSTER LLP

By: /s/ Jordan Eth

Jordan Eth

Attorneys for the JDSU Defendants